

AMENDED IN ASSEMBLY JUNE 25, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1918

Introduced by Assembly Members Niello and Garcia
(Coauthors: Assembly Members ~~Houston~~ Anderson, Horton,
Houston, Huff, Maze, Silva, and Villines)
(Coauthors: Senators Denham and Runner)

February 8, 2008

An act to ~~amend Section 17144~~ of *add Section 17144.5* to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1918, as amended, Niello. Income taxes: principal ~~residence~~. *residence: mortgage debt forgiveness.*

The Personal Income Tax Law, in modified conformity to federal income tax laws, requires a borrower to include in his or her income, with certain exceptions, the amount of debt canceled or discharged, as specified.

This bill would provide further conformity to federal income tax laws by conforming to specified provisions of the federal Mortgage Forgiveness Debt Relief Act of 2007, relating to the exclusion of the discharge of qualified principal residence indebtedness, as defined, from a taxpayer's income if that debt is discharged after January 1, 2007, and before January 1, 2009, as provided.

This bill would take effect immediately as a tax levy.

~~The Personal Income Tax Law, in modified conformity with federal income tax laws, authorizes an exclusion from gross income for qualified~~

~~principal residence indebtedness, as defined, but requires specified discharges of indebtedness to be included in gross income.~~

~~This bill would, in modified conformity with federal law, provide for an exclusion from gross income for discharges of indebtedness on a principal residence that occur on or after January 1, 2007.~~

~~This bill would take effect immediately as a tax levy.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17144.5 is added to the Revenue and
2 Taxation Code, to read:

3 17144.5. (a) Section 108 of the Internal Revenue Code, relating
4 to income from discharge of indebtedness, as amended by Section
5 2 of the Mortgage Forgiveness Debt Relief Act of 2007 (Public
6 Law 110-142), shall apply, except as otherwise provided.

7 (b) Section 108(a)(1)(E) of the Internal Revenue Code, as added
8 by Section 2 of the Mortgage Forgiveness Debt Relief Act of 2007
9 (Public Law 110-142), is modified by substituting the phrase
10 “January 1, 2009” for “January 1, 2010” contained therein.

11 (c) Section 108(h)(2) of the Internal Revenue Code, as added
12 by Section 2 of the Mortgage Forgiveness Debt Relief Act of 2007
13 (Public Law 110-142), is modified by substituting the phrase
14 “(within the meaning of section 163(h)(3)(B))” for the phrase
15 “(within the meaning of section 163(h)(3)(B), applied by
16 substituting ‘\$2,000,000 (\$1,000,000)’ for ‘\$1,000,000 (\$500,000)’
17 in clause (ii) thereof)” contained therein.

18 (d) This section shall apply to discharges of indebtedness
19 occurring on or after January 1, 2007, and, notwithstanding any
20 other law to the contrary, no penalties or interest shall be due with
21 respect to the discharge of qualified principal residence
22 indebtedness during the 2007 taxable year regardless of whether
23 or not the taxpayer reports the discharge on his or her return for
24 the 2007 taxable year.

25 SEC. 2. The Legislature finds and declares that the mortgage
26 debt tax relief allowed to taxpayers in connection with the
27 discharge of qualified principal residence indebtedness, as
28 described in this act, serves a public purpose and does not

1 *constitute a gift of public funds within the meaning of Section 6 of*
2 *Article XVI of the California Constitution.*

3 *SEC. 3. This act provides for a tax levy within the meaning of*
4 *Article IV of the Constitution and shall go into immediate effect.*

5 SECTION 1. ~~Section 17144 of the Revenue and Taxation Code~~
6 ~~is amended to read:~~

7 ~~17144. (a) Section 108(b)(2)(B) of the Internal Revenue Code,~~
8 ~~relating to general business credit, is modified by substituting “this~~
9 ~~part” in lieu of “Section 38 (relating to general business credit).”~~

10 ~~(b) Section 108(b)(2)(G) of the Internal Revenue Code, relating~~
11 ~~to foreign tax credit carryovers, shall not apply.~~

12 ~~(c) Section 108(b)(3)(B) of the Internal Revenue Code, relating~~
13 ~~to credit carryover reduction, is modified by substituting “11.1~~
14 ~~cents” in lieu of “33 ⅓ cents” in each place in which it appears. In~~
15 ~~the case where more than one credit is allowable under this part,~~
16 ~~the credits shall be reduced on a pro rata basis.~~

17 ~~(d) Section 108(g)(3)(B) of the Internal Revenue Code, relating~~
18 ~~to adjusted tax attributes, is modified by substituting “(\$9)” in lieu~~
19 ~~of “(\$3).”~~

20 ~~(e) (1) If a taxpayer makes an election for federal income tax~~
21 ~~purposes under Section 108(c) of the Internal Revenue Code,~~
22 ~~relating to treatment of discharge of qualified real property business~~
23 ~~indebtedness, a separate election shall not be allowed under~~
24 ~~paragraph (3) of subdivision (e) of Section 17024.5 and the federal~~
25 ~~election shall be binding for purposes of this part.~~

26 ~~(2) If a taxpayer has not made an election for federal income~~
27 ~~tax purposes under Section 108(c) of the Internal Revenue Code,~~
28 ~~relating to treatment of discharge of qualified real property business~~
29 ~~indebtedness, then the taxpayer shall not be allowed to make that~~
30 ~~election for purposes of this part.~~

31 ~~(f) (1) Paragraph (1) of Section 108(a) of the Internal Revenue~~
32 ~~Code is modified by striking “or” at the end of subparagraph (C);~~
33 ~~by striking the period at the end of subparagraph (D) and inserting~~
34 ~~“; or” and by inserting after subparagraph (D) the following new~~
35 ~~subparagraph:~~

36 ~~(E) The indebtedness discharged is qualified principal residence~~
37 ~~indebtedness which is discharged before January 1, 2010.~~

38 ~~(2) For purposes of this section, the term “qualified principal~~
39 ~~residence indebtedness” means acquisition indebtedness (within~~
40 ~~the meaning of Section 163(h)(3)(B) of the Internal Revenue Code,~~

1 applied by substituting “\$2,000,000 (\$1,000,000” for “\$1,000,000
2 (\$500,000” in clause (ii) thereof) with respect to the principal
3 residence of the taxpayer.

4 (g) For purposes of this section, all of the following rules shall
5 apply:

6 (1) ~~The amount excluded from gross income by reason of~~
7 ~~Section 108 (a)(1)(E) of the Internal Revenue Code shall be applied~~
8 ~~to reduce (but not below zero) the basis of the principal residence~~
9 ~~of the taxpayer.~~

10 (2) ~~Section 108 (a)(1)(E) of the Internal Revenue Code shall~~
11 ~~not apply to the discharge of a loan if the discharge is on account~~
12 ~~of services performed for the lender or any other factor not directly~~
13 ~~related to a decline in the value of the residence or to the financial~~
14 ~~condition of the taxpayer.~~

15 (3) ~~If any loan is discharged, in whole or in part, and only a~~
16 ~~portion of that loan is qualified principal residence indebtedness,~~
17 ~~Section 108 (a)(1)(E) of the Internal Revenue Code shall apply~~
18 ~~only to so much of the amount discharged as exceeds the amount~~
19 ~~of the loan (as determined immediately before such discharge) that~~
20 ~~is not qualified principal residence indebtedness.~~

21 (4) ~~The term “principal residence” has the same meaning as~~
22 ~~when used in Section 121 of the Internal Revenue Code.~~

23 (h) (1) ~~Section 108(a)(2)(A) of the Internal Revenue Code is~~
24 ~~modified by substituting “(D), and (E)” in lieu of “and D.”~~

25 (2) ~~Section 108 (a)(1)(B) of the Internal Revenue Code shall~~
26 ~~not apply to a discharge to which Section 108 (a)(1)(E) of the~~
27 ~~Internal Revenue Code, as modified by this section, applies unless~~
28 ~~the taxpayer elects to apply paragraph (1)(B) of Section 108(a) of~~
29 ~~the Internal Revenue Code in lieu of paragraph (1)(E) of Section~~
30 ~~108(a) of the Internal Revenue Code.~~

31 (i) ~~The amendments to this section by the act adding this~~
32 ~~subdivision shall apply to discharges of indebtedness that occur~~
33 ~~on or after January 1, 2007.~~

34 SEC. 2. This act provides for a tax levy within the meaning of
35 Article IV of the Constitution and shall go into immediate effect.